



The Bar Council

Employed pupils on secondment within chambers

Purpose: To provide assistance to pupil barristers in employed practice who undertake a secondment in Chambers, and to their pupil supervisors.

Scope of application: All practising barristers (particularly those practising in crime, and regulatory and public sector law)

Issued by: The Ethics Committee

Originally issued: December 2020

Status and effect: Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.

Introduction

1.1 Enabling pupils from the employed Bar to experience time in Chambers on secondment is to be encouraged. For example, the interests of justice are best served if prosecution and defence counsel each understand their respective duties and how each should properly discharge them; and lawyers from regulatory authorities and the broader public sector will also benefit from having wider experience including in the private sector or with appropriate self-employed specialists during their training. The nature of such secondments is likely to involve pupils receiving a salary from their employers during the period of secondment. This note is intended to assist pupils who

might undertake such secondments, and the barristers who will supervise them.¹

- 1.2 Depending on the nature of the work undertaken by the employer, and by Chambers, ethical considerations may arise, particularly if the secondment takes place during a pupil's second or third six² month of pupillage. For example, a secondee may be instructed to represent a defendant or respondent in a case being investigated or prosecuted by the organisation which employs the pupil, such as the CPS or HMRC. The ethical considerations which may arise in such a secondment include, but are not limited to, consideration of duties relating to independence, conflicts of interest and client confidentiality.

Relevant Core Duties

- 2.1 The core duties most likely to be engaged in such an arrangement are:

CD2 You must act in the best interests of each client

CD3 You must act with honesty, and with integrity

CD4 You must maintain your independence

CD5 You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession

CD6 You must keep the affairs of each client confidential

CD10 You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations

Independence, Conflicts and Confidentiality

- 3.1 The Core Duties and Rules provide that a barrister must ensure his/her ability to act independently is not compromised (rC3.5), and that s/he must not do anything which could reasonably be seen by the public to undermine the barrister's independence (rC8).

¹ Second six pupils who practise under their supervisor's certificate must ensure they have a self-employed supervisor for the duration of the secondment and comply with the requirement for registration of pupillage (C3, part 2 Bar Qualification Manual). If you undertake a secondment as a third six pupil you may, as a result, be in dual-capacity practice. See Guidance Note at <https://www.barcouncilethics.co.uk/documents/dual-capacity-practice-protocol/>

² This is a non-regulatory term but is commonly understood by the Bar to mean a temporary period of practice within chambers (or with an employer) that may lead to tenancy (or employment).

- 3.2 Ensuring the ability to act independently is not compromised should include consultation with the pupil's employer and Chambers before the secondment starts in order to consider how best to address the issues dealt with in this note. It would be prudent for Chambers and the employer to draft a memorandum of understanding to set out the guidelines and safeguards which have been put in place to ensure compliance with the Core Duties and Rules³. The document should include, but is not limited to:
- a. The time and duration of the secondment;
 - b. An agreement that the secondment may be terminated by mutual agreement by providing notice in writing to the other party. Any notice period should be specified;
 - c. Any consequences of termination. For example, the pupil barrister must return any material which is the property of Chambers or destroy any case documents in his/her possession.
 - d. Authorisation by the Director of Legal Services, or equivalent, from the pupil's employer which allows the pupil to act as an independent advocate for the duration of the secondment;
 - e. An acknowledgement by the Director of Legal Services, or equivalent, from the pupil's employer that the pupil will have unfettered conduct of all cases in which the pupil is instructed whilst on secondment and that the employer will have no authority to limit the pupil's discretion as to how the best interests of her professional or lay client are served; (rC15.4)
 - f. An undertaking that the pupil will not be disciplined, or otherwise penalised, for work done which is consistent with the pupil's professional obligations during time spent as an independent advocate;
 - g. An undertaking that the pupil will continue to be paid a full salary for the duration of the secondment;
 - h. Revocation of access to any of the employer's digital and/or paper systems for the duration of the secondment to include email, intranet and other associated portals. This may be achieved by removal of any work-issued laptop or other device;

³ See also the BSB's Bar Qualification Manual at Section 4J part 2 "Secondments and training delivered by another organisation", in particular paragraphs 2.4-2.6 "Conflicts of Interest".

- i. An undertaking that the pupil will not use any employer-generated log-in for the Crown Court Digital Case System, evidence.com, Egress or any other similar system devised and/or provided by the employer during the period of the secondment;
- 3.4 Rule C8 addresses how a barrister's conduct is perceived by the public. Guidance to rC8 provides:

“gC16 Conduct on your part which the public may reasonably perceive as undermining your ... independence is likely to diminish the trust and confidence which the public places in you or in the profession, in breach of CD5.”
- 3.5 To ensure compliance with the seconded pupil's duty to act with honesty and integrity (CD3), and to ensure that any prospective client would not be knowingly or recklessly misled about the true position (rC9.1), the pupil's clerk, on receipt of instructions to attend Court or otherwise represent a client that the seconded pupil might fulfil, should immediately inform the solicitor via email of the pupil's employment, the nature of the secondment, and the safeguards which have been put in place to ensure compliance with the relevant Core Duties and Rules. An endorsement should be attached to that email to enable the solicitor, if possible, to inform his client of these facts in advance of the hearing or conference. If this is not possible, for example due to the late instruction of counsel or for some other reason, then the seconded pupil must ensure that the client understands the endorsement and that the endorsement is signed in advance of any conference or Court hearing. An example of an endorsement to be signed by the lay client is annexed to this note.
- 3.6 The communication with the solicitor or other professional client should include the following information:
 - a. The nature of the employment;
 - b. That the pupil is authorised to act as an independent barrister whilst in chambers;
 - c. That the pupil is unable to access any case files on prosecution systems;
 - d. That the pupil has a professional duty to act in the best interests of his/her clients which overrides any other obligation;
 - e. That the pupil will observe his/her duty of confidentiality to the lay client;

- f. That the pupil will not be involved in any future prosecution which involves the lay client.
- 3.7 Steps such as these will ensure that the pupil does not intentionally or recklessly mislead a client about the nature and scope of the legal services provided: rC19.4.
- 3.8 rC21 sets out circumstances in which barristers must not accept instructions. Where the pupil has been involved in the prosecution of a case which involves a defendant who s/he is subsequently asked to defend, the pupil must not accept instructions (see rC21.4). Conversely, where the pupil undertakes a secondment which leads to him/her defending, s/he should not subsequently be involved in any way in the prosecution of any individual s/he has defended.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please refer to the professional practice and ethics section of the Bar Council’s website [here](#).

ANNEX: STANDARD FORM OF ENDORSEMENT FOR LAY CLIENT CONSENT

"I, [insert name], understand that my barrister, [insert name], is employed by the [insert prosecution authority] which is the agency prosecuting me. I understand that I can decline to be represented by him or any advocate. S/he has explained to me that, although he is a paid employee of [insert prosecution authority] his/her duty is to act independently and in my best interests according to the professional code of conduct and standards that all barristers must obey, which includes a duty of confidentiality. S/he has explained that his/her legal obligation towards me takes absolute priority over his /her employment with [insert prosecution authority]. I understand that [insert name] does not have any access to information or systems which would not be available to any other defence advocate. I fully understand that while s/he acts for me, s/he does not represent the prosecution in any way, and that the prosecution has no say in how s/he presents my case in court. Knowing all of this, I am happy that s/he represents me."